

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 24, 2009 Session

RUTH M. COOPER, ET AL. v. KEVIN SMITH and NATHANIEL LINDER

**Direct Appeal from the Circuit Court for Fentress County
No. 8323 John McAfee, Judge**

No. M2008-01729-COA-R3-CV - Filed May 6, 2009

Appellants filed this action for declaratory judgment asking the trial court to interpret a provision in a deed. The trial court concluded that the deed was unambiguous and did not allow Appellants to present parol evidence showing the grantor's intent. We find that the deed contains a latent ambiguity and therefore reverse and remand this matter to the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed

J. STEVEN STAFFORD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S., and DAVID R. FARMER, J., joined.

Melanie Stepp Lane, Jamestown, TN, for the appellants, Ruth M. Cooper, Carl Cooper, Kyle Cooper, Judy Conatser, and Bulah Hinds; Trustees of Wight's Chapel Baptist Church

Craig P. Fickling, Cookeville, TN, for the appellees, Kevin Smith and Nathaniel Linder

MEMORANDUM OPINION¹

¹ Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Background

In 1964, Sarah J. Cooper erected a building on a parcel of property in Fentress County, Tennessee. This building came to be known as Wright's Chapel Baptist Church. On December 5, 1969, Ms. Cooper executed a deed conveying both the building and the underlying property to Wright's Chapel Baptist Church. The deed included the following provisions:

For good and valuable consideration received, I, SARAH COOPER, the surviving widow of Granville Cooper, deceased, do hereby convey unto WRIGHT CHAPEL BAPTIST CHURCH, its trustees and their successors and assigns, the following described land:

In the Third Civil District of Fentress County, Tennessee, about 10 miles west of Jamestown, and beginning at a set stone corner on the north side of Highway 52, same being the southeast corner of the Virgil and Sarah Beat home tract and upon which they now reside; thence northeastwardly with Beaty's line 346 ½ feet to the south line of the Wright Cemetery property; thence eastwardly with the Wright Cemetery property 66 feet; thence southwestwardly and parallel with the Beaty line 346 ½ feet to a set stone corner on the north side of Highway 52; thence westwardly with said highway 66 feet to the beginning. And being the same property upon which is now located the Wright Chapel Baptist Church Building.

TO HAVE AND TO HOLD unto grantee in fee simple. Grantor covenants lawful seizin and possession, right to convey, and that the land is unincumbered; and will warrant and defend the title thereto against all lawful claims.

At the time of the conveyance there was no organized group of people known as Wright's Chapel Baptist Church, nor was there any group of people meeting regularly inside the building. Accordingly, there were also no trustees when the deed was executed.

Until her death in 1975, Ms. Cooper maintained the property and the building. Although no regular congregation met in the building, Ms. Cooper made it available to the community for funerals, revival services, and homecomings. After Ms. Cooper's death, her children acted as caretakers of the property and continued allowing members of the community to use the building for occasional services.

In 1999, Ruth Cooper, the daughter of Sarah Cooper, allowed a local minister named Robert Wright to begin holding regular Sunday services in the building. From this point on, a congregation met regularly for church services in the building. None of the members of the Cooper family joined the congregation. In either 2001 or 2004 (the record on this issue is unclear), the congregation elected, by majority vote of its members, a board of trustees. The record does not contain

documentation explaining the election of the board of trustees or its role in governing the congregation.

In 2005, two members of the congregation asked the Cooper family for permission to build a fellowship hall on the property. The family declined and the present dispute began. Members of the congregation removed outdoor toilets from the property and changed the locks on the building's doors. At this point, the Cooper family notified the leaders of the congregation that they should leave the building and surrender possession. When the members refused, the family initiated the current action.

On October 3, 2007, Ruth M. Cooper, Carl Cooper, Kyle Cooper, Judy Conatser, and Bulah Hinds, the children and grandchildren of Sarah Cooper, filed a petition for Declaratory Judgment in Fentress County Circuit Court. The petition named Nathaniel Linder and Kevin Smith as respondents.² Although the record is not clear on this point, it appears that Mr. Smith was the church's minister and Mr. Linder was a member of the board of trustees. The petition first asked the circuit court to declare the Petitioners to be the trustees of Wright's Chapel Baptist Church as that term is used in the deed. The petition also asked the court to order the Respondents to vacate the building and return the keys to the building to the Petitioners.

On March 5, 2008, the parties entered an agreed order setting a final hearing on the matter. At the hearing, the parties stipulated to some of the salient facts and the trial court heard argument. The primary issue at the hearing was whether the deed contained an ambiguity. Petitioners argued that the term "Wright Chapel Baptist Church" in the deed was ambiguous because no such organization existed at the time the deed was executed. Petitioners argued that the trial court should hear parol evidence to clarify Ms. Cooper's intent. The trial court disagreed and based its ruling solely on the pleadings, the stipulated facts, and the deed itself. On July 30, 2008, the trial court denied the Petitioners' requested relief and entered an order which included the following findings:

At the conclusion of [the hearing], the Court found that the evidence submitted in support of the plaintiffs did not sustain the plaintiff's burden of proof. The Court specifically finds that the deed executed by Mrs. Sarah J. Cooper conveying a parcel of property located in Fentress County, Tennessee, to Wright Chapel Baptist Church, its trustees, successors and assigns, dated December 5, 1969, and recorded in Deed Book 0-4, Page 331, in the Fentress County Register of Deeds' office, contains no ambiguities. As such, based upon the common law of this State, the Court has no choice but to dismiss the plaintiffs' complaint with prejudice.

Petitioners then filed a notice of appeal of the trial court's ruling.

²On remand, the trial court should consider whether Petitioners have named all the necessary parties as required by Tenn. Code Ann. § 29-14-107. The statute is mandatory and a jurisdictional requirement. *Huntsville Util. Dist. v. Gen. Trust Co.*, 839 S.W.2d 397, 403-04 (Tenn. Ct. App. 1992).

Petitioners raise the following four issues for review, as stated in their appellate brief:

1. Did the Trial Court err in finding the deed from Sarah Jane Cooper to Wright's Chapel Baptist church contained no ambiguities?
2. Did the Trial Court err in finding it could not interpret a latent ambiguity in a deed?
3. Did the Trial Court err in finding that absent obvious ambiguities in the deed itself there should be no further inquiry?
4. Did the Trial Court err in finding the respondents' congregation trustees were successor trustees to the petitioners?

Law and Analysis

Petitioners asked the trial court to determine their rights under the deed and enter a judgment in their favor pursuant to Tennessee's Declaratory Judgments Act, Tenn. Code Ann. §§ 29-14-101–113. Tenn. Code Ann. § 29-14-103 provides:

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Tenn. Code Ann. § 29-14-103. Although Petitioners asked to be declared the trustees of Wright's Chapel Baptist Church, it became clear at the hearing that they first wanted the trial court to determine the meaning of the term "Wright Chapel Baptist Church" as used in the deed. Because they contended that this term was ambiguous, Petitioners asked the trial court to consider parol evidence showing the grantor's intent.

The interpretation of a deed is a matter of law. *Mitchell v. Chance*, 149 S.W.3d 40, 45 (Tenn. Ct. App. 2004). Our review of the trial court's determination that the deed did not contain an ambiguity is therefore de novo. *See id.*

The primary issue before this Court is whether the trial court erred in finding that the deed was unambiguous and consequently declining to consider parol evidence on the grantor's intent. Parol evidence that adds to, varies, or contradicts the language of the deed is generally inadmissible. *Mitchell*, 149 S.W.3d at 44. Parol evidence, however, may be admissible to remove a latent

ambiguity in a deed; it is inadmissible to explain a patent ambiguity. *Id.* The *Mitchell* Court explained that “a patent ambiguity is one which appears on the face of the deed, while a latent ambiguity is one which is not discoverable from a perusal of the deed but which appears upon consideration of the extrinsic circumstances.” *Id.* at 44-45.

In the present case, both parties agree that there was no entity or group known as “Wright Chapel Baptist Church” at the time the deed was executed. This is not apparent from simply examining the face of the deed. The ambiguity appears only after learning that “Wright Chapel Baptist Church” did not exist in 1969. The deed therefore contains a latent ambiguity, and Petitioners are entitled to present parol evidence to explain the meaning of the ambiguous term.

Because of our holding the petitioners remaining issues are pretermitted, and this matter is remanded to the trial court. On remand, the trial court should first determine if Petitioners have named all the necessary parties as required by Tenn. 29-14-107(a). If this jurisdictional requirement is satisfied, the trial court may permit Petitioners to present parol evidence on the latent ambiguity in the deed. Costs of this appeal are taxed to Appellees.

J. STEVEN STAFFORD, J.